99TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 99-76
Part 2

ANTI-APARTHEID ACT OF 1985

MAY 16, 1985.—Ordered to be printed

Mr. DERRICK, from the Committee on Rules,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1460, which on March 7, 1985, was referred jointly to the Committees on Banking, Finance and Urban Affairs, Foreign Affairs, and Rules]

The Committee on Rules, to whom was referred the bill (H.R. 1460) to express the opposition of the United States to the system of apartheid in South Africa, and for other purposes, having considered the same, reports favorably thereon without amendment and recommend that the bill do pass.

SCOPE OF REPORT

Under clause 1(q)(1) of rule X, the Committee on Rules is vested with responsibility for the "rules and joint rules . . . and the order of business of the House".

In addition to its well understood responsibility for resolutions relating to the order of business, the committee receives referral of all bills and resolutions changing or affecting the rules of the House.

H.R. 1460 imposes sanctions on some investment and trade in South Africa unless progress is made to end the system of apartheid, and calls upon the President to persuade other countries to adopt similar restrictions.

These restrictions include a ban on new bank loans to the South African government, except those made available for education, housing or health facilities open to all races; a prohibition of sales or computers to the South African government; a ban on new investment in South Africa, and a prohibition against purchases of

51-006 O

H683-4

gold coins minted or offered for sale by South Africa, including the one-ounce gold krugerrand.

The latter two sanctions can be waived for one year initially, and for additional periods of six months if the President, with the approval of Congress, determines that the South African government has fulfilled one or more of eight specified reforms.

Section 4 of the bill authorizes the ban on new U.S. investment in South Africa. Section 5 authorizes the prohibition against the importation of krugerrands or other South African gold coins. Section 6 permits the President to seek legislative authorization to waive the prohibitions in sections 4 and 5, and provides procedures for congressional consideration of such legislation.

H.R. 1460 was jointly referred to the Rules Committee for consideration of those provisions relating to rules and procedures of the House. The provisions in Section 6 which the committee considers rules of the House are those which (1) designate the committee of the House which will receive referral of joint resolutions introduced pursuant to such a request and (2) provide expedited procedures for consideration of such resolutions.

In addition, sections 6 and 11 of the bill contain provisions which constitute congressional review, more commonly known as "legislative veto". Under these sections, Congress must review determinations made by the President concerning waivers or termination of the sanctions against the government of South Africa.

The Committee on Rules shares joint jurisdiction with the Committee on Judiciary over legislative veto bills which contain rules of the House and are applicable to federal agency rulemaking generically. In the case of legislative vetos applicable to specific agencies or programs, the jurisdiction of the Committee on Rules is shared with the standing committee or committees of the House having responsibility for measures relating to the agency or program in question.

Although H.R. 1460 was jointly referred to the Rules Committee without limitation, the committee asserts jurisdiction only over certain provisions in Section 6, and has confined its consideration to those provisions. In all aspects of the bill not specifically affecting the rules of the House, the Committee declines to make recommendations or comments since these are matters clearly within the jurisdiction of the Committee on Foreign Affairs and the Committee on Banking, Finance and Urban Affairs.

COMMITTEE CONSIDERATION

H.R. 1460 was introduced on March 7, 1985 by Mr. Gray. The bill was referred jointly to the Committee on Foreign Affairs, the Committee on Banking, Finance and Urban Affairs, and the Committee on Rules. It is cosponsored by 139 Members of the House.

The bill is based on prior hearings and consideration by the Foreign Affairs Committee. Hearings continued in the 99th Congress. On April 30, 1985, the Foreign Affairs Subcommittee on Africa and the Subcommittee on International Economic Policy and Trade met jointly to consider H.R. 1460. An amendment relating to the expedited procedure provisions of the bill was offered by Mr. Solarz and

adopted by voice vote. Subsequently the bill was reported to full committee by voice vote.

The Foreign Affairs Committee met in open session May 2 to consider the bill. A latter was submitted for the record from the Committee on Banking, Finance and Urban Affairs stating that it would not hold separate hearings or markup of H.R. 1460. The committee then ordered the bill reported to the House, favorably, by a vote of 29–6.

On May 16, 1985, the bill was considered by the Committee on Rules and reported by voice vote, without amendment.

COMMITTEE VIEWS

The committee wishes to note its continuing concern over the proliferation of expedited procedures for consideration of joint resolutions of approval or disapproval. Legislative veto legislation often contains these special procedures, which are intended to provide more timely consideration and votes on approval or disapproval resolutions than would procedures which have been set forth under the standing rules of the House.

The committee is sensitive to the concerns of those who propose legislative vetoes and expedited procedures. While many such procedures can be justified within the context of the individual bills that contain them, the committee is concerned about the cumulative effect of the large number of provisions which have been enacted. In the wake of the recent Supreme Court decision, *INS -v- Chadha*, special procedures providing expedited consideration are becoming more integral and frequent features of legislative veto provisions.

If expedited procedures continue to proliferate, the committee believes it may be necessary, at some future point, for the House to set out priorities among bills containing these procedures. The procedures interfere with the normal legislative process under which rules or bills are considered, and reduce the flexibility of the House in setting its own agenda.

The usual language of expedited procedures circumvent the normal procedures for consideration of a measure. In instances where there are several joint resolutions of approval or disapproval reported or discharged at the same time, the House would be faced with the difficult decision as to the priority of consideration of measures with equal privilege.

This is intended as no criticism of the development of this bill. The committee is aware that significant efforts have been made by those responsible for the bill to accommodate the reservations of the committee with respect to rules of the House contained in prior versions of legislation. For this reason, and as an accommodation to the political urgency attendant to the bill, the committee proposes no amendments.

The Rules Committee acknowledges that expedited procedures have been included in legislation over the years without the specific objections of the Committee. It has made no consistent effort to end the practice of including expedited procedures due to various political and time constraints attendent those bills under consideration.

The committee has determined that it is time to take a more serious approach to this situation, however, and to do something about it because of the great potential for disruption of the legislative priorities of the House. The Committee intends to conduct a comprehensive evaluation of the whole issue of expedited procedures and to publish guidelines in the near future.

Approval of the expedited procedures in this bill, therefore, should not be construed as an indication that such procedures will be automatically approved in other bills in the future. The committee reserves the right to review each provision on its own merits, and will be reluctant to approve expedited procedures that circumvent the normal rules of the House.

If an issue is of such urgency or importance that it demands the immediate attention of the House, procedures are available in the rules of the House to facilitate such consideration. Moreover, if it is the intention of a committee to exercise more control or oversight, procedural mechanisms are already available by which it can effectively carry out this function.

BASIS OF RULES COMMITTEE ACTION

The House Rules Committee has carefully reviewed all provisions of H.R. 1460 under its jurisdiction. A detailed discussion of these provisions follows.

Format of joint resolutions

Section 6(a) allows the President, subject to Congressional approval, to make certain findings which would justify the granting of waivers against the prohibitions contained in sections 4 and 5 of the bill.

Section 4 prohibits investment (including bank loans) in South Africa with the exception of those already underway. Section 5 prohibits the importation into the U.S. of krugerrands or any other gold coin minted or offered for sale by the South African Government.

Under the provisions of section 6(a), the President would be allowed to waive the sanctions for limited periods if he determined that South Africa had met one or more of eight reforms set forth in section 6(b), including the termination of certain racial restrictions, the release of political prisoners, achievement of a recognized settlement on Namibia, and initiation of meaningful negotiations for ending the system of apartheid. It further provides that the President shall submit such determinations to Congress for approval by enactment of a joint resolution.

The Supreme Court decision, *INS* v. *Chadha*, appears to require Congress to review executive delegations and recommendations only by statutory affirmation or nullification. The committee is satisfied that the language calling for a joint resoluton of approval in H.R. 1460 meets the constitutional objections of the court which require passage by both Houses and presentment to the President for signature or veto.

Committee designation

Section 6(c)(1) provides that any joint resolution of approval introduced in the House and Senate pursuant to the provisions of H.R. 1460 will be referred in accordance with the respective rules of the two Houses. The committee does not object to this restatement of the standing rules of the House. The rules require all bills to be delivered to the Speaker to be referred by him, and it is mandatory that such referrals be made in accordance with the jurisdiction of the several committees set forth in clause 1 of rule X. The committee does strenuously object to the language sometimes proposed in connection with legislative vetoes which designate a committee which will receive referrals of a joint resolution.

Automatic discharge

Section 6(c)(2) provides that the committee to which such joint resolution is referred will be discharged of further consideration if the joint resolution is not reported within 30 days. Contrary to the normal rules of the House, the section provides for automatic discharge of committee consideration rather than a discharge pursuant to clause 4, rule XXVII.

Under that rule, a discharge petition may be filed with the Clerk 30 days after a bill has been referred to a committee. If the petition is signed by a majority of the Members of the House, the motion to discharge the committee from further consideration is in order and, if it is adopted, the House may immediately proceed to consideration of the matter. Under this rule it is also in order for a Member to file a motion to discharge the Committee on Rules from further consideration of an order of business resolution or rule. If a petition is signed by a majority of Members of the House and the motion to discharge adopted, the rule will be considered by the House.

While not offering amendments to this section of H.R. 1460, the Rules Committee does wish to note its view that the normal procedures for discharge are adequate to insure swift congressional action on important and time-sensitive matters. This seems particularly true in the case of joint resolutions of approval, which do not contain the same time factors applicable to joint resolutions of disapproval. In the future, the Committee may want to move with caution in approving joint resolutions which include automatic discharge provisions.

Consideration

Section 6(c)(3) sets forth procedures by which the Congress can consider joint resolutions waiving prohibitions set forth in sections 4 and 5 of the bill. Under the section, it shall be in order, when a resolution of approval has been reported or discharged, for the Committee on Rules to present for consideration a resolution providing procedures for the immediate consideration of such joint resolution.

The usual language of a rule provides "That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration

of the bill . . ." This language grants the Speaker discretion to schedule consideration of legislation after the rule is adopted.

In contrast to this language section 6(c)(3) recommends that the Rules Committee report a resolution which provides for immediate consideration of the joint resolution. Once such a rule is adopted, the consideration of the legislation occurs immediately. It would not be possible to delay consideration except by a unanimous consent request. Such language would insure immediate consideration once a rule is adopted without extensively altering the normal process.

In addition, section 6(c)(3) provides that it shall be in order for consideration of a joint resolution under procedures which are similar, if applicable, to procedures set forth in section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976. These procedures pertain to rules for consideration of matters in the Senate.

The clear intent of the Senate language cited herein is to expedite consideration of a resolution on the Floor. The procedures provide a time limitation for debate, and allow no amendment or motion to recomit the resolution for further consideration.

The committee notes that the parliamentary practices of the House and Senate vary substantially. The committee also feels it is important to note that the authority of each House to "determine the rules of its proceedings" is constitutionally grounded. Therefore, the Rules Committee, while respecting the recommendation made in section 6(c)(3), does retain the authority to exercise discretion in designing procedures appropriate to consideration of measures in the House.

Coordination of House and Senate action

Section 6(c)(4) provides that if, prior to the disposition of an approval resolution of one House, the House receives a resolution of the other House with respect to the same matter, the vote in the first House shall occur on the joint resolution of the other House. The language is designed to expedite consideration of the joint resolution, and the committee does not object to its inclusion.

General provisions

Sections 6(c)(5) and 6(c)(6) deal with technical matters relating to calculation of continuity of session, and format of the approval resolution. section 6(c)(5) provides that days when either House adjourns for more than 3 days or because of sine die adjournment will be excluded in calculating the 30 day automatic discharge period. Section 6(c)(6) stipulates the language for the joint resolution of approval. The committee proposes no amendments to these sections.

Conclusions

In considering the specific provisions of section 6, the Rules Committee finds that the Committee on Foreign Affairs has used caution in devising language which both meets the constitutional requirements of the Chadha decision and provides special procedures of a limited nature.

The committee has chosen to assert its jurisdiction over the rules of the House and to issue this report in order to express its continuing concern over the cumulative effect of expedited procedures, and the potential danger which indiscriminate use of such procedures poses to the normal legislative process.

In the future, the committee intends to be active in reviewing the use of expedited procedures which circumvent the normal rules of the House. While there are instances where the inclusion of special procedures may be necessary, the committee believes that there are few such instances. Further, the Committee believes that it has a responsibility to address the increasing frequency with which the committees of the House have used special procedures to resolve a particularly difficult political or policy concern within their own jurisdiction.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

Changes in the Rules of the House made by H.R. 1460

Clause 4(d) of rule XI requires reports from the Committee on Rules, on resolutions amending the Rules of the House of Representatives, to contain a comparative print indicating changes in the existing rules. Although the bill would make minor changes in the procedures of the House, it would do so in a manner that does not directly amend the Rules of the House of Representatives.

Changes in existing law made by H.R. 1460

Clause 3 of Rule XIII requires the report of each committee on a bill or joint resolution to contain a comparative print relating to the measure. The report of the Committee on Foreign Affairs to accompany the bill (H. Rept. 99-76 Pt. 1) contains matter in compliance with the "Ramseyer rule," indicating changes in existing law made by the bill, as reported. Under the joint referral, the committee has recommended no changes in the bill, as reported by the Committee on Foreign Affairs.

Congressional Budget Office estimates

Clause 2(1)(3)(C) of rule XI requires each committee report to contain any cost estimate and comparison prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974. No such estimate has been received by the Rules Committee. However, the committee is aware that such an estimate was prepared for the Committee on Foreign Affairs and appears in the report of that committee to accompany the bill (H. Rept. 99-76 Pt. 1). Under the joint referral, the committee has recommended no changes in the bill, as reported by the Committee on Foreign Affairs.

Clause 2(1)(3)(B) of rule XI requires each committee report on a measure providing new budget authority or increased tax expenditures to contain any statement required by section 308(a) of the Congressional Budget Act of 1974. This measure does not provide new budget authority nor increase tax expenditures.

Committee cost estimate

Clause 7(a) of rule XIII requires certain committee reports to contain committee cost estimates. Clause 7(d) of Rule XIII exempts the Committee on Rules; nonetheless, the committee explores the cost implications of all measures it considers. In addition, the cost estimate required under this rule does not apply to the bill. The committee is aware of no costs, with regard to the limited scope of the bill reviewed by it and defers to the judgment of the Committee on Foreign Affairs on the costs associated with the bill (H. Rept. 99–76, Pt. 1).

Oversight findings

Clause 2(1)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has made no special oversight findings in connection with the bill and notes that, under the rules of the House, oversight responsibility with regard to foreign policy is vested in the Committee on Foreign Affairs. The committee defers, on this matter, to the report to accompany the measure made by the Committee on Foreign Affairs (H. Rept. 99–76, Pt. 1).

Oversight findings and recommendations of the Committee on Government Operations

Clause 2(1)(3)(D) or rule XI requires each committee report to contain any oversight findings and recommendation made by the Committee on Government Operations pursuant to clause 4(c)(2) of rule X. No such findings and recommendations have been received.

Inflation impact statement

Clause 2(1)(4) of rule XI requires each committee report to contain a statement relating to the inflationary impact of the enactment of that measure. The committee is aware of none and defers, on this matter, to the report to accompany the measure of the Committee on Foreign Affairs.

Views of committee members

Clause 2(1)(5) of rule XI requires each committee to afford a three day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report.

Although neither requirement applies to the committee, it always makes the maximum effort to provide its members with such an opportunity.

MINORITY VIEWS ON H.R. 1460

The Committee on Rules shares jurisdiction over H.R. 1460, the "Anti-Aparatheid Act of 1985," because section 6(c) of the bill provides special procedures for the consideration of joint resolutions approving the presidential waiver of certain economic sanctions for 12 months initially, and up to six month intervals thereafter, if certain conditions are met.

Specifically, section 6(c) provides that such joint resolutions shall be referred to the appropriate committees of the House and Senate and, if not reported within 30-days, would be automatically discharged from the committees. However, whereas the Senate resolutions would then be privileged for floor consideration, House resolutions would be required to receive a special order resolution (rule) from the Rules Committee before they would be eligible for calling-up on the floor.

Without addressing ourselves to the issue of economic sanctions against South Africa, which is not within our Committee's jurisdiction, we must strongly oppose the passage of H.R. 1460 as reported on procedural grounds alone. To interject the Rules Committee into this process is to guarantee unnecessary if not indefinite delays in considering and approving a presidential waiver of sanctions.

The Rules Committee is widely known as an "arm of the majority leadership" in the House, and is even recognized in House precedents as, "the political and policy vehicle of the House of Representatives to effectuate the party program and the party policy." (*Deschler's Precedents,* Volume 6, Chapter 21, section 16.2, on "functions" of the Rules Committee) To subject presidential waiver approval resolutions to the clearance of such a party policy arm when the President is of another party, clearly runs the risk of permanently blocking House consideration if the majority leadership opposes the waiver.

Such a prospect is not farfetched when you cconsider that in the last three Congresses between 12 and 14 percent of the bills *reported* from committees, which *committee chairmen* requested rules on, nevertheless died in the Rules Committee. H.R. 1460, on the other hand, provides for the automatic discharge of resolutions not reported within a specified period. Is the Rules Committee likely to look more favorably on such resolutions not reported from committee, and for which rules have not been requested by the committee chairman or majority leadership? It's doubtful.

We think it would be far preferable, if this process is to be considered both credible and workable, to incorporate the procedures enacted last year in the continuing appropriations resolution for both the release of MX and Nicaraguan "contra aid" funds. Under those procedures, not only were the committees of jurisdiction discharged of joint resolutions of disapproval if they did not report within a specified number of days, but, the resolutions were then

privileged for floor consideration without requiring further clearance from the Rules Committee.

The Rules Committee's report on this bill objects to the increasing reliance on such "expedited" procedures on grounds they "interfere with the normal legislative process" and "reduce the flexibility of the House in setting its own agenda." However, experience shows that, despite such procedures, arrangements are usually made with the leadership on both sides to call up such privileged matters at specified times for the benefit of both the committees involved and the House as a whole. In other words, they become part of the normal legislative process and the House agenda because they are anticipated and scheduled.

H.R. 1460 can hardly be subject to the charge of cluttering the House floor with all manner of new business since the bill only makes provision for waiver approval resolutions at infrequent intervals—the first for 12 months and subsequent waivers at six months intervals, for a total of eight resolutions at most in four and one-half years (since there are only eight conditions involved).

CONCLUSION

While H.R. 1460 will be subject to extensive debate and amendments over the merits of imposing economic sanctions on South Africa, we have necessarily confined our discussion to the procedural aspects of handling resolutions which would waive those sanctions if certain conditions are met. We find the bill deficient because it erects a potential obstacle to the consideration of such resolutions. It does this by diverting them to the Rules Committee of the House, rather than bringing them directly to the floor as privileged as is done in the Senate, and as we have done earlier this year with the MX and contra aid funding resolutions.

We find the privileged route far preferable and more credible in terms of insuring consideration of a measure that might not be to the liking of the majority leadership in the House and the committee which is considered its procedural arm. Expedited procedures are often necessary if Congress is to retain the flexibility and control over Executive actions that it exercised with legislative veto provisions prior to the *Chadha* decision. Such procedures are just as essential now as the Congress develops alternatives to the legislative veto. They should not be dismissed out of hand simply because they circumvent the purview of a procedural committee. The larger interests of the institution should sometimes take precedence.

JAMES H. QUILLEN.
DELBERT LATTA.
TRENT LOTT.
GENE TAYLOR.

○